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SUBJECT: TELECOM TRADE AGREEMENTS 2009 REVIEW

REF: STATE 4730

¶1. This cable responds to the action request in reftel: "What are the conditions under which a foreign-affiliated company (i.e. a 50-50 joint venture with a Chinese partner) could claim a benefit under the CEPA to offer services such as IP-VPN in China, as a value-added service supplier?"

¶2. 2007 amendments to the Closer Economic Partnership Arrangement (CEPA) between the PRC and Hong Kong give Hong Kong-based Internet Protocol - Virtual Private Network (IP-VPN) operators national treatment. The CEPA imposes no geographic restrictions on the operators; they can establish joint ventures with Mainland Chinese partners in any province or city in the PRC. The Hong Kong IP-VPN's shareholding should not exceed 50 percent. The operator is allowed to either set up a new joint venture in China, or form a joint venture through merging or acquiring the shares of existing Mainland telecommunications service providers.

¶3. In order to enjoy national treatment granted under CEPA, the IP-VPN operator should be either a registered legal entity in Hong Kong (defined as a business duly constituted or otherwise organized under the applicable laws of Hong Kong, and which has engaged in substantive IP-VPN operations in Hong Kong for three to five years), or a "natural person" of Hong Kong (defined as a Hong Kong permanent resident). Permanent residents of Hong Kong who obtain CEPA treatment as a "natural person" are not required to present a Certificate of Hong Kong Service Supplier (HKSS), but must provide to PRC authorities proof of permanent residence status in Hong Kong, and must also provide a Home Visit Permit (if a Chinese citizen) or a HKSAR passport. An IP-VPN registered as a legal entity should apply to the Hong Kong Trade and Industry Department for a Certificate of HKSS, before applying to the relevant Mainland authorities to receive preferential treatment under CEPA.

DONOVAN